IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 105 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEW SANKALP RESTAURANT

Versus

NEETU KAILASH GOENKA

Appearance:

1. Appeal from Order No. 105 of 2000

MR RR SHAH for Petitioners No. 1-2

MR HARSHIL SHAH for Petitioners No. 1-2

NANAVATI ASSOCIATES for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 19/10/2001

ORAL JUDGEMENT

On 8.10.2001 on the request of learned counsel Shri Shah for the appellants this matter was adjourned as

he wanted to take instructions from his client i.e. the appellants. Today, learned counsel Shri Shah for the appellants stated at the Bar that the restaurant is closed, therefore, he is not able to make any statement without concrete instrucion from his client-appellants.

However, Mr.Shah learned counsel for the appellants vehemently submitted that the learned Trial Judge committed grave error in allowing notice of motion Ex.5 in Civil Suit No.6489/99 and issuing injunction against the appellants restraining them from using name of NEW SANKALP in terms of para 15(a) and (b) of the notice of motion Ex.5 till final disposal of the suit. This submission of Mr.Shah cannot be accepted for the simple reason that while allowing notice of motion Ex.5 and restraining the appellants original-defendants from using the name of NEW SANKALP till final disposal of the suit, learned judge has clearly found that the respondents original plaintiffs made out prime facie case in her favour and the balance of convenience was also in her favour. According to the learned Judge if injunction was not issued by the petitioner-plaintiff then the plaintiff would suffer irreparable loss. This order was passed by the learned Trial Judge way back on 21.2.2000, which is challenged in this appeal. It was straightaway admitted on 24.3.2000 and Shri Y.J.Trivedi appearing on caveat waives service of notice on behalf of respondents. Along this appeal, Civil Application No.1920 of 2000 was filed for interim orders and after hearing learned counsel for the parties, by way of interim order, the appellants were permitted to make use of word NEW SANKALP RESTAURANT in equal size letters. However, the appellants were specifically restrained from using the logo of bird in the menu card as well as on the stationery till hearing and final disposal of the main appeal. Along with direction the Civil Application was disposed of.

As stated earlier NEW SANKALP run by appellant itself is closed down, therefore, in view of the interim order dated 24.3.2000 passed in Civil Application No.1920 of 2000 restraining the appellants from using the logo of bird in the menu card as well as stationery till the final disposal of this appeal, nothing survives in this appeal. Accordingly, it was required to be dismissed.

On merits also the learned Judge has given sound reasons for granting application Ex.5. In such type of matters, where the learned trial court has exercised its sound discretion then this court would certainly not interfere with such orders.

In view of the above discussion, this appeal fails and is dismissed. Notice discharge. No order as to costs.

(B.J.Shethna, J.)

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